



S.A(MD)No.593 of 2013

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A(MD)No.38 of 2016
and
C.M.P(MD) No.966 of 2016

Veerappan

...Appellant/Appellant/
Plaintiff

-Vs-

1.Mariammal

2.Sakkaraisamy

... Respondents/Respondents/
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 26.06.2015 made in A.S.No.15 of 2014 on the file of Sub Court, Virudhunagar, reversing the judgment and decree dated 09.07.2014 made in O.S.No.195 of 2013 on the file of District Munsif Court, Virudhunagar and allow this second appeal.

For Appellant : Mr.S.Srinivasa Raghavan



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JUDGMENT

The plaintiff in the suit is the appellant. The appellant filed a suit for bare injunction and the same was dismissed by the trial Court and confirmed in appeal.

2. According to the appellant, the suit property originally belonged to one Karuppasamy Chettiar and his son Arjunan sold the property to one Singaram and the appellant purchased the suit property from said Singaram under unregistered sale deed dated 25.10.1994. After purchase, the appellant put up a thatched house in the suit property in the year 1996 and he also put up a concrete house in the year 1999. It was further stated in the plaint that he has been in possession and enjoyment by paying house tax and electricity bill etc., It was further alleged that the respondents, who purchased the property situated opposite to the suit property tried to interfere with the possession and enjoyment of the appellant by putting up fence in front of the suit property and thereby denied the right of access available to the appellant to the road. In view of the attempted interference by the respondents over the possession of the appellant, he was constrained to file a suit for injunction.



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3. Though the respondents entered appearance after service of suit summon, they failed to file written statement and therefore, they were set ex parte before the trial Court. Even in the second appeal though notice served on the respondents, they failed to enter appearance and their names appeared in the list, there is no representation for the respondents.

4. The trial Court non-suited the appellant on the ground that sale deed marked by him as Ex.A.1 dated 25.01.1994 is an unregistered insufficiently stamped document and therefore, it is inadmissible in evidence. The trial Court also found that the other documents filed by the appellant to prove his possession like house tax receipt, electricity bill and notice from the electricity board addressed to the appellant cannot be connected with the suit property in the absence of document evidencing his title over the suit property. Therefore, the suit for bare injunction filed by the appellant was dismissed on the ground that he failed to prove his possession over the suit property. Aggrieved by the said judgment and decree, the appellant filed an appeal in A.S.No.15 of 2014 on the file of Sub Court, Virudhunagar. The appellate Court also concurred with the



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finding of the trial Court and dismissed the first appeal. Challenging the same, the appellant is before this Court.

5. The second appeal was admitted by formulating the following substantial questions of law:-

1. Whether the Courts below have committed an error by rejecting the evidentiary value of document of proof and possession of the suit property for the reason that the documents of title produced is inadmissible under the Evidence Act?

2. Whether the Courts below have failed to find in a suit for bare injunction and prima facie case and balance of convenience and possession as on date of institution of the suit are relevant?

3. Whether the Courts below have committed an error by the refusal to appreciate Exs.A2 to A4 which are very much relevant for the purpose of proof of possession and enjoyment of the suit property as on date of institution of the suit property?



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6. Elaborating the substantial questions of law framed at the time of admission, the learned counsel for the appellant submitted that in a suit for bare injunction, the appellant/plaintiff is required to prove, prima facie, his lawful possession over the suit property and it is not necessary for him to establish his title. The learned counsel further submitted that though the Courts below rejected Ex.A.1 unregistered sale deed produced by the appellant on the ground that it was unregistered and insufficiently stamped, the other documents filed by the appellant like house tax receipt, electricity bill and notice issued by the electricity board should have been taken into consideration for deciding the nature of appellant's possession.

7. It is the submission of the learned counsel for the appellant that non consideration of Ex.A.2 to Ex.A4 evidencing possession of the appellant over the suit property vitiate the judgments passed by the Courts below. Admittedly, the appellant claims right over the suit property under unregistered insufficiently stamped sale deed. It is settled law under Section 35 of the India Stamp Act failure to affix the proper stamp duty would make the document inadmissible for any purpose including the collateral purpose. Therefore, Ex.A1 unregistered,



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insufficiently stamped sale deed produced by the appellant cannot be looked into even for collateral purpose to assess the nature and character of alleged possession of the appellant. When Ex.A.1 title document relied on by the appellant is per se inadmissible for any purpose, it may not be possible for the Court to come to a conclusion regarding legal possession of appellant only based on Ex.A.2 to Ex.A.4. Therefore, the Courts below are justified in coming to a conclusion that the appellant failed to prove his lawful possession over the suit property by convincing the evidence. Therefore, the concurrent findings arrived at by the Courts below need not be interfered with as it cannot be termed as perverse.

8. However, it is always open to the appellant to cure the defect in the insufficiently stamped document by paying proper stamp duty together with penalty and try to prove his alleged possession over the suit property. It is made clear that the dismissal of present suit for want of evidence to prove lawful possession over the suit property will not come in the way of appellant filing a suit for declaration of title and appropriate other consequential relief in the manner known to law, if so advised.



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9. With these observations, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/ No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Subordinate Judge, Virudhunagar.
2. The District Munsif, Virudhunagar
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

CP

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